REMARKS

Applicant has amended claims 3-5, 7, 8, 11, 15-18, and 20-25 to correct minor informalities or to change claim dependencies. No new matter has been added and no amendment was made in response to any objection or rejection raised by the examiner. The amendments were merely clarifying in nature.

The examiner rejected claims 1-25 under 35 U.S.C. 103(a) as being unpatentable over Rickard et al (US 6,016,483).

The examiner stated:

> 6. Regarding claim 1 -
> Rickard discloses a method of determining an opening price for a product traded in a trading system, the method executed over a distributed network computer system, said method comprising: with removing further comprising: identifying the oldest of interest at the most aggressive price on each side of the market; selecting the older interest of the identified interest to designate as initial interest; and matching initial interest against all contra side interest (e.g. col. 6 Ln 45- col. 7 Ln 47, col 10, 40-55; col 11 Ln 15-25).
> 7. Rickard does not specifically discuss detecting a lock/cross condition in the market prior to opening; removing the lock/cross condition to allow opening of trading in the particular product. However, it would be obvious to one of ordinary skill in the art to adapt Rickard to include this, or any number of other steps, in order to more efficiently and profitably trade.

Applicant's claim 1 is distinct over Rickard. Richard fails to suggest detecting a lock/cross condition in the market prior to opening and removing the lock/cross condition to allow opening of trading in the particular product. The examiner admits that Rickard does not specifically discuss detecting a lock/cross condition in the market prior to opening or removing the lock/cross condition to allow opening of trading in the particular product. The examiner however concludes that "it would be obvious to one of ordinary skill in the art to adapt Rickard to include this, or any number of other steps, in order to more efficiently and profitably trade." Applicant disagrees.

Rickard is directed to the problem of: "determining a set of opening prices for a number of series of options traded on an options exchange and for allocating public order imbalances at the opening of trading." (See abstract). According to Rickard:

> When opening multiple series of options in a common underlying security, variations in public order bids and offers across the series also will produce discrepancies in opening prices with respect to the theoretical prices that would correspond to a single implied volatility across all series. For example, a large imbalance of buy orders in one particular series might cause it to open at a significantly higher implied volatility than that of other series. Imbalances between public bids and offers at the opening must be rectified by the market makers. Also, as stated above, variations in the price of the underlying security during the time required to cycle through the opening can result in further significant discrepancies in opening prices across the series. For example, if the underlying stock or index price is falling rapidly, a later-opening call that would have been in-the-money at the beginning of the opening rotation might actually be opened at a lower price than an earlier-opening call that was opened at-the-money. (Rickard Col. 4, Ln. 66 to Col. 5, Ln. 16)

Richard, thus is directed to the problem of determining opening prices of a series of options in the face of order imbalances and to the further problem of allocating order imbalances to market makers. Applicant's invention is directed to a different problem, namely the removal of trading interest that locks or crosses a market in order that the market can have an orderly open. Rickard does not discuss detecting a lock/cross condition in the market prior to opening or removing the lock/cross condition to allow opening of trading in the particular product because in the context of the teachings of Rickard those features would have no purpose. Therefore, the examiner's motivation that: "it would be obvious to one of ordinary skill in the art to adapt Rickard to include this, or any number of other steps, in order to more efficiently and profitably trade." is completely insufficient to suggest a modification of Rickard. The absence of motivation to modify Rickard to include the features of detecting a lock/cross condition ... or removing the lock/cross condition to allow opening of trading ... follows because the modifications would destroy the intent and/or function of the primary reference by providing a market structure and pricing mechanism for options that is not called for by the reference.

With respect to the other limitations in claim 1, the examiner cites passages at col. 6, Ln 45- col. 7, Ln 47, col. 10, Ln 40-55 and col. 11, Ln 15-25 to support her position. Neither in those passages nor elsewhere does Richard suggest removing the lock/cross condition by

identifying the oldest of interest at the most aggressive price on each side of the market, selecting the older interest of the identified interest to designate as initial interest and matching initial interest against all contra side interest.

The passage at col. 6, Ln 45 to col. 7, Ln 47 deals with determining a consistent set of implied volatilities that will maximize a weighted volume of trades across all series at the opening and allocating residual imbalances among public orders to the market makers by assigning contra positions to the market makers. Rickard assigns residual public orders to market makers in a manner that minimizes a cumulative measure of deviation between the post-opening desired target positions and the actual positions of each market maker at the conclusion of the first stage. This does not suggest any of the features of Applicant's claim 1.

Richard at col. 10, Ln 40-55 and col. 11, Ln 15-25 merely provides details of the algorithms that Rickard uses to calculate opening implied volatilities. Again, in none of these teaching or elsewhere in Rickard, is found suggestion for removing the lock/cross condition by identifying the oldest of interest at the most aggressive price on each side of the market, selecting the older interest of the identified interest to designate as initial interest and matching initial interest against all contra side interest.

According claim 1 is distinct over Rickard.

Claims 2-13 depend directly or indirectly from claim 1 and are allowable at least for the reasons discussed in claim 1. These claims also add patentable features.

Claim 3, for example, recites calling an internalizing agent process to match orders against contra side interest of a market participant at the best price and having an ID matched to the order. Claim 3 recites a so called internalization in which the method gives preferential order flow to market participants for orders that are entered by their customers, provided that the market makers are at the best prices in the market. The examiner contends that:

> 9. Regarding claim 3 -
> Rickard discloses calling an internalizing agent process to match orders against contra side interest of a market participant at the best price and having an ID matched to the order (e.g. col 1 Ln 25-45).

Applicant : Daniel F. Moore et al.   Attorney's Docket No.: 09857-071001
Serial No. : 10/046,652
Filed   : January 14, 2002
Page   : 10 of 11

Rickard has no such teachings at the cited passage or elsewhere. At that passage Rickard discusses the so called opening rotation of opening options in an options market.

Claim 4 specifies the interest that can be locking or crossing the market as all quote-generated and non-directed, priced orders ... . This is not suggested by Rickard.

Claim 5 recites executing any remaining interest in a particular priority. This is not suggested by Rickard.

Claim 6 recites that the particular priority is Price/Time priority, which is not suggested by Rickard.

Claims 7-9 recite specific execution features that are not suggested by Rickard.

Claim 11 recites that executions occur at the price of the book interest so that any price improvement is realized by the initial interest. Rickard does not suggest realization of price improvement.

Claim 13 further includes testing whether the lock/cross condition has been removed and if the condition was removed, disseminating an opening price for the product. Rickard does not suggest to test if the lock/cross condition has been removed, since Rickard does not suggest the lock/cross condition in the first place.

Claim 14 recites a computer program product to remove a lock/cross condition to allow opening of trading in a security. The computer program product includes the features of instructions to identify the oldest of interest at the most aggressive price on each side of the market, select the older interest of the identified interest to designate as initial interest and match initial interest against all contra side interest. Claim 14 is allowable for analogous reasons as in claim 1.

Claims 15-21 depend directly or indirectly from claim 14 and are allowable at least for the reasons discussed in claim 14 and corresponding dependent claims.

Claim 22 is directed to a system for determining an opening price for products traded over a distributed, networked computer system. Claim 22 includes the feature of a server computer ... executing a server process that determines an opening price for the product, ... comprising instructions ... to identify the oldest of interest at the most aggressive price on each

side of the market, select the older interest of the identified interest to designate as initial interest and match initial interest against all contra side interest. Claim 22 is allowable for analogous reasons as in claims 1 and 14.

Claims 23-25 depend directly or indirectly from claim 22 and are allowable at least for the reasons discussed in claim 22 and corresponding dependent claims.

The art cited by not applied by the examiner is seen as neither describing nor suggesting Applicant's invention.

It is believed that all the rejections and/or objections raised by the examiner have been addressed. All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable in addition to the reasons given above.

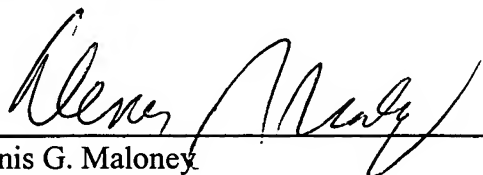Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, or made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 12/28/04

Denis G. Maloney
Reg. No. 29,670

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21235462.doc